

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION  
2:14 cr 06-2

UNITED STATES OF AMERICA, )  
                                  )  
Vs.                            )                                  **ORDER**  
                                  )  
EVARD LAMAR BRADLEY,     )  
                                  )  
Defendant.                  )  
                                  )  
\_\_\_\_\_

**THIS MATTER** has come before the undersigned pursuant to a Motion for Reconsideration of Detention Order and Incorporated Memorandum of Law (#39) filed by Andrew Banzhoff, attorney for Defendant. For the reasons stated herein, the undersigned will deny the motion without prejudice.

**Discussion.**

LCrR 47.1(B) provides as follows:

**(B) Certificate of Conference With Filing.**

Pretrial motions, other than motions to suppress, *ex parte* motions, and notices (notice of substitution of counsel, notice of appearance, notice of intent to present certain types of evidence, etc.) shall include a certification that the moving party has conferred with opposing counsel and state opposing counsel's position on the relief sought, or an explanation as to why conferring should not be required under the circumstances. If a hearing on a motion is requested, counsel should estimate the length of such hearing.

The motion for reconsideration does not reflect that there has been compliance with LCrR 47.1(B). The pleading does not contain any reference that Defendant's counsel has conferred with the U.S. Attorney's Office regarding the motion, nor does the pleading provide the position of the U.S. Attorney concerning the relief sought by the Defendant. The pleading further does not contain an explanation as to why conferring should not be required under the circumstances. For that reason, the motion of the Defendant will be denied without prejudice.

The motion for reconsideration is further denied for the reason that the Defendant has not included within his motion the standard of review for this Court to apply.

Finally, the motion of Defendant does not show if Defendant is seeking relief before this Court or before the District Court. In the motion, the Defendant states the motion is being brought pursuant to 18 U.S.C. § 3145(b). That statute states as follows:

**18 U.S.C. § 3145(b). Review and appeal of a release or detention order.**

**(b) Review of a detention order---**

If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

18 U.S.C. § 3145(b) provides for a review of an order of detention by a District Judge who is a judge of a Court having original jurisdiction over the offense. The Motion for Reconsideration of Detention Order (#39) filed by Defendant appears to request the undersigned Magistrate Judge to hear the Defendant and reconsider this Court's previously filed Order (#37). As a result, the undersigned cannot determine whether or not the Defendant wishes to appeal the Order of the undersigned revoking the terms and conditions of pretrial release of Defendant (#37) to the District Court or whether or not the Defendant wishes the undersigned to reconsider the issue.

For all of the foregoing reasons, the undersigned has determined to enter an Order denying Defendant's motion without prejudice.

## **ORDER**

**IT IS, THEREFORE, ORDERED** that the Motion For Reconsideration of Detention Order and Incorporated Memorandum of Law (#39) is **DENIED** without prejudice.

Signed: September 22, 2014

Dennis L. Howell  
Dennis L. Howell  
United States Magistrate Judge 